

The issue on appeal is the date of accident or, stated another way, whether claimant's current need for preliminary hearing benefits is a natural and direct consequence of an earlier injury claimant suffered while working for respondent or whether, instead, claimant suffered a new accident and injury. The dispute primarily concerns the proper weekly benefit rate for temporary total disability compensation. The second injury would also have been while working for respondent and the compensability of the claim is not otherwise in dispute.

Findings of Fact and Conclusions of Law

After reviewing the record and considering the arguments, the Appeals Board (Board) concludes that the issues raised on appeal are not jurisdictional issues. As a consequence, the Board does not have jurisdiction to review those issues at this stage of the proceedings.

On an appeal from a preliminary hearing order, the Board is limited to review of allegations that the Administrative Law Judge (ALJ) exceeded his/her jurisdiction. K.S.A. 44-551. This includes review of issues identified in K.S.A. 44-534a as jurisdictional issues. On the current appeal, there is no dispute that claimant's current need for temporary total disability compensation and medical treatment is the result of an injury that arose out of and in the course of his employment with respondent. The only questions are date or dates of accident, whether claimant suffered one accident or two, and, as a result what is the proper compensation rate for temporary total disability benefits. Claimant contends the ALJ erred when she found a single accident and a temporary total disability rate of \$401 under the earlier claim. This contention does not raise one of the issues identified in K.S.A. 44-534a and does not otherwise constitute an allegation that the ALJ exceeded her jurisdiction.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal of the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on April 24, 2002, should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this _____ day of August 2002.

BOARD MEMBER

c: Dale V. Slape, Attorney for Claimant
Frederick L. Haag, Attorney for Respondent and Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Workers Compensation Director